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December 31, 1984

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Re: U.S.A., et al. v. Reilly  
Tar & Chemical Corp., et al.

Gentlemen:

In our recent conversation in which we agreed to make no objections to certain small time extensions requested by David Hird and Dennis Coyne, I promised to send you what I had on December 31 and follow up within a few days thereafter. Accordingly, please accept the following partial disclosure of additional expert witnesses.

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**NOEL E. KITTELL**

Mr. Kittell is a wood preservation engineer who resides in La Grange Park, Illinois. He has been actively associated with the wood preservation industry since 1923, and is presently engaged in his own wood and wood preservation consulting business. He is currently an Honorary Member of the American Wood-Preservers' Association, has worked actively on a number of its Technical Committees, including the Preservatives Committee, of which he is its senior member in point of service, and has in the past served as President of the AWWA and on its Executive Committee.

Mr. Kittell will testify, based on his knowledge of and experience in the industry, his review of most of the AWWA proceedings from the period 1917 to 1972, and his review of certain documents connected with this case, including "Appendix A: Site History" of the April, 1983 ERT Report, the affidavit of Carl Leshar dated March 22, 1984, and the "Historical Review of Waste Water Treatment Practices for Coal Tar Refineries and Wood Preserving Plants" prepared by ERT and dated December 3, 1984, that the wastewater treatment facilities at the Reilly Tar & Chemical Corporation plant in St. Louis Park, Minnesota were comparable or superior to those in use in the industry at the relevant times over much of the operating life of its plant. He will also testify, again based on his own knowledge of and experience in the industry and his review of AWWA proceedings that, during the period from 1917 to 1972, the industry did not regard its creosote or coal tar products or wastes as posing any significant health threats to humans.

**SIDNEY SHINDELL**

Sidney Shindell, M.D., Professor and Chairman, Department of Preventive Medicine, Medical College of Wisconsin, Milwaukee, Wisconsin. Dr. Shindell has examined the epidemiologic evidence underlying the EPA's 1980 report entitled, "Ambient Water Quality Criteria for Polynuclear Aromatic Hydrocarbons," and some of the assumptions underlying the EPA risk assessment for permissible levels of PAH in drinking water. He has also examined the 1977 and 1978 reports of the Minnesota Department of Health. His conclusion with respect to the evidence concerning human risk is that while 18th century British chimney sweeps and non-white top oven

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workers in Pittsburgh steel plants appear to be exposed to an occupational cancer risk, chimney sweeps on the continent, and workers handling coal and coal by-products are not. With respect to the 1978 risk assessment by the Minnesota Department of Health, his conclusion is that the report ignores abundant epidemiologic evidence that there is no health risk at levels of exposure much higher than those present in St. Louis Park. With respect to the animal data relied upon by the EPA in its 1980 report, his opinion is that the EPA ignored the evidence that biologic response to a toxic agent is not the same at low and high doses and ignores the fact that the body has built-in antagonists which counteract the toxicity of foreign substances, including potential carcinogens. Dr. Shindell will compare the risks postulated by the EPA to be associated with water containing 28 ng/l BaP with the overall cancer risks in the United States. His opinion with respect to the State of Minnesota's unique attempt to establish criteria for non-carcinogens when no health risks are known is that such an attempted estimation is a matter of pure speculation.

His references are on the attached list.

**DR. WILLIAM R. HAVENDER**

Dr. Havender, whose curriculum vitae is attached, has prepared a rough draft of a report which will be mailed to you later this week. In general, he has reviewed the 1980 risk assessment done by the Environmental Protection Agency, explained the highly conservative assumptions contained therein, and will demonstrate that more probable extrapolations from the same data will result in a criteria for carcinogenic PAH in drinking water 1,000 times higher than the criteria of 28 ng/l set forth in that document. He will also explain the errors involved in trying to extrapolate from the high doses used for animal studies to the low doses used for human risk assessment. Next, he will address the approach to evaluating the risks, if any, of exposure to a PAH mixture. Finally, he will compare the risks associated with the St. Louis Park drinking water, using the same risk assessment methodologies used by the EPA, with other common substances such as food and cigarettes.

**DR. MARTYN SMITH**

Dr. Smith, whose curriculum vitae is enclosed, will collaborate with Dr. Havender on some aspects of the study of the St. Louis Park problem. He has prepared a draft partial

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report but proposes to do additional research and computer simulation of the 1980 EPA risk assessment for PAH. He and Dr. Havender will also, at a later date, critique the reports submitted by the plaintiffs' experts. Like Dr. Havender, Dr. Smith will compare the "risks" projected by using EPA risk assessment techniques associated with St. Louis Park drinking water and other common substances such as diet and cigarettes. He will also discuss the Minnesota approach to establishing criteria for noncarcinogens, and the comparative carcinogenic potency of benzo[a]pyrene as compared with other compounds in the St. Louis Park drinking water. His final report will not be ready for several weeks, but will be furnished at that time. Dr. Smith's draft partial report will be typed and furnished later this week.

**DR. WALTER SPITZER**

Dr. Spitzer is the Chairman of the Department of Epidemiology and Biostatistics, McGill University, Montreal, Quebec, Canada. He has reviewed or is reviewing the risk assessment documents issued by the EPA and the State of Minnesota. He will also review the report of Drs. William Havender and Martyn Smith and the underlying data reflected therein and based thereon, will state his opinion as to whether the PAH concentrations in the St. Louis Park groundwater pose an imminent and substantial endangerment to the public health. It is not possible to be more specific at this time concerning his testimony because it is necessary that he first review research and reports which are presently being prepared by others.

**DR. PETER SHANAHAN**

Information concerning Dr. Shanahan's credentials has previously been furnished. Enclosed with this letter is a report entitled "Computer Modelling of the St. Louis Park Area Employing the Modified USGS Ground-Water Flow Model, etc." This report is a supplement to Exhibit E contained in the 1400-page ERT report dated April, 1983. Dr. Shanahan will testify in accordance with Exhibit E and the enclosure. References are contained in the mentioned reports.

**GENERAL NOTICE**

Because of the importance of this case to the public as well as to the parties, we are continuing to have

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discussions with epidemiologists, toxicologists, oncologists and other scientists who have spent many years in cancer research and study. We believe that when this case is tried, the Court will want the utmost assurance that any remedy ordered will adequately protect the public health and safety. Due to the short time negotiated by the parties and allowed by the Court in its Case Management Order dated November 30, 1984, it has not been possible to completely fill out Reilly's list of expert witnesses on the public health issues involved in this case. Therefore, we want to give notice to all parties that Reilly may find it necessary to seek leave of court to add another witness or to substitute another witness for one of those already listed in this letter or our letter of December 7, 1984.

Very truly yours,

  
Edward J. Schwartzbauer

EJS:ml  
Enclosures

cc: Honorable Crane Winton  
All Counsel of Record  
Robert Leininger, Esq. ✓  
Paul G. Zerby, Esq.